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Supreme Court, U.S.
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No. 95-1426

In The

Supreme Court of the United States

October Term, 1995

THE ESTATE OF MAURICE HANSEN,

Petitioner,

v.

THE CITY OF NEW HAVEN,

Respondent.

On Petition For Writ Of Certiorari To The United States Supreme Court From A Denial Of Said Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The City of New Haven respectfully requests that this Court deny the petition seeking review of a state trial court decision which was denied certification to appeal on September 13, 1995 by the State of Connecticut. This petition brought on March 5, 1996 seeks to interpose a federal question which was raised for the first time before the Supreme Court of the State of Connecticut. Petitioner's failure to raise this issue at the appropriate time precludes consideration by the United States Supreme Court.

JURISDICTION

The petitioner erroneously asserts that this Court has jurisdiction to review a federal question which was not properly raised in the lower courts pursuant to federal statute 28 U.S.C. § 1257(a). The alleged federal question was never raised, preserved or passed upon by the courts below. This failure violates the long established requisite that the United States Supreme Court has the power to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision may be had. . . . " 28 U.S.C. § 1257 (1948); *See also, Philip Cardinale, Jr. v. State of Louisiana*, 394 U.S. 437, 22 L.Ed.2d 398, 89 S. Ct. 1162 (1969). No final review by the state court has occurred. As a result this Court lacks jurisdiction over this Petition For Writ Of Certiorari.

COUNTER-STATEMENT OF THE CASE

The petitioner entered into a written contract with the City of New Haven which bound both parties to its express terms. For approximately six months he attempted to perform the terms of the contract. After six months of performance petitioner sought to modify the terms of the contract to seek additional reimbursements that were not provided for in the contract. The City did not agree to his proposed modification. Pet. for Cert. at 2-3.

The petitioner brought suit for breach of contract and unjust enrichment seeking both damages and restitution. The trial court addressed these claims in its Memorandum of Decision, awarding partial damages but denying the unjust enrichment claim as the petitioner did not prove either that he was entitled to the benefits he sought or that the City received a benefit. Pet. App. 3-4. Petitioner appealed to the Appellate Court of the State of Connecticut without raising any federal statutory or constitutional allegations. The Appellate Court affirmed the trial court's decision. Petitioner thereafter filed a Motion for Articulation which did not contain any constitutional issues. Pet. App. 16-20. That motion was denied as was his Motion for Review. Pet. for Cert. at 4. Petitioner then sought unsuccessfully to have the trial court reargue the matter. Thereafter he petitioned to the Supreme Court of the State of Connecticut for certification, where, for the first time, he raised a federal constitutional issue for review.

REASONS FOR DECLINING REVIEW

1. The Petitioner Failed To Raise Any Federal Constitutional Violation Before the State Courts, Below.

A writ of certiorari to review a judgment of a state court will be dismissed where the federal claim was not seasonably made in the state court. *American Surety v. Baldwin*, 287 U.S. 155, 161, 77 L.Ed. 231, 235 (1932). In their Petition for Certification to the State of Connecticut, the petitioner raised, for the first time, a federal question that he failed to allege in earlier proceedings before either the trial court or the appellate courts. The issues raised by the petitioner in the lower courts were wholly state matters, i.e., breach of contract and unjust enrichment. Pet. App. 1. The trial court decision thereafter upheld by the appellate court was based exclusively on state law. The State Supreme Court denied certification without issuing an opinion. Pet. App. 22.

Petitioner now seeks review by this Court without establishing that the alleged federal question was raised, preserved or passed upon the Courts, below. *Cardinale*, supra, at 438. No evidence on the record supports a contention that the federal question was presented to the state court. The state court must be afforded the opportunity to review a federal question before this Court can undertake review.

> "Before this court may undertake review of a decision of a State it must appear affirmatively from the records, not only that the Federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary

> to the determination of the cause." *Honeyman v. Hanan*, 300 U.S. 14, 18, 81 L.Ed. 476, 479 (1936).

Petitioner's writ fails this procedural requirement since the state court was neither presented nor did it entertain the alleged federal question.

Petitioner cannot claim that by raising a federal question for the first time on a Petition for Certification to the State Supreme Court, the presentation requirement is met. Connecticut General Statute Section 52-263 permits appeals from Superior Court for parties aggrieved by the decision of the court for "any question or questions of law arising in the trial. . . . " Whenever state law requires presentation at the trial level for review of the highest court, failure to present the issue at the appropriate level precludes the highest court from having considered the issue presented. *Mutual Life v. McGrew*, 188 U.S. 291, 47 L.Ed. 480, 23 S. Ct. 375 (1903). This Court lacks jurisdiction since petitioner was required to raise this issue at the trial level, pursuant to valid state law. Petitioner's failure to raise the federal question at the appropriate time prevented the State Supreme Court from entertaining the federal question before it for the first time. The highest court will not revise judgment of a court below on a question not therein raised. *Id.*

Petitioner's due process claim is therefore raised before this Court without notice and opportunity to be heard by the state court, and is not seasonally made, so as to serve as a basis for review by this Court. *American Surety, supra,* at 163. Accordingly this Court should not exercise jurisdiction as it would be in violation of this long standing principle. *Cromwell v. Randle*, 10 Pet. 368,

391 (1836). The Petition for Writ of Certiorari should therefore be denied.

2. Petitioner's Federal Claim is Insufficient at Law.

Even assuming that the constitutional question was raised it was done so insufficiently. Something more than the bare assertion that authority is exercised under the United States Constitution is essential to the jurisdiction of the Federal Supreme Court. *Millinar v. Hartupee*, 73 U.S. 258, 18 L.Ed. 829 (1868).

The petitioner first alleged a constitutional issue in his Petition for Certiorari to the Supreme Court of the State of Connecticut. His allegation read as follows:

> "the Appellant has a constitutional right to appeal and such denial thereby amounts to denial of a procedural due process of law, and further denial of the estate's property interest in the Appellant's performance under the contract." Resp. App. 1.

Petitioner now seeks review from this Court of these alleged federal due process violations. This Court has stated that to sufficiently raise a federal question concerning a violation of Fourteenth Amendment, a mere claim of a denial of due process does not constitute adequate specificity to confer its jurisdiction. *Thomas v. Iowa*, 209 U.S. 258, 52 L.Ed. 782, 28 S. Ct. 487 (1908). A non-specified due process allegation provides this Court little or no direction to the alleged federal claim or to the offending state statute. This Court is without jurisdiction to review a judgment where there is no substance or merit in the

federal question upon which jurisdiction depends. *Wabash R. Co. v. Flannigan*, 192 U.S. 29, 48 L.Ed. 328, 24 S. Ct. 224 (1904); *Great N. R. Co. v. Alexander*, 246 U.S. 276, 62 L.Ed. 713, 38 S. Ct. 237 (1918). Therefore, this Court should decline jurisdiction since petitioner's allegation is so vague that it fails to promote a legitimate basis for review and is merely conclusory since no facts are alleged to support its contention.

Petitioner improperly seeks to cure his defective due process claim in his Petition for Writ of Certiorari. He attempts to cure the defective claim by adding more specificity, citing the state statute which he now alleges avails him of a property interest pursuant to the Fifth and Fourteenth Amendments. This revision cannot be made as petitioner is limited to what is in the record. This Court has expressly stated that what is present for its review is that which appears in the record and specifically raised in the courts below. It is not enough that it might have been made. *See, Smith v. Maryland*, 59 U.S. 71, 15 L.Ed. 269 (1855). Petitioner is now precluded from expanding the record.

CONCLUSION

For the above mentioned reasons this Court should deny certiorari. The state court has not been afforded the opportunity to review a constitutional violation and thus, this Court has no basis to grant such review. *Cardinale*, supra at 439. Furthermore, the vague federal question raised only upon petition to the State Supreme Court failed to meet the requirements of the state statute drawn

into question or identify a specific constitutional violation as this Court demands before jurisdiction for review will be granted. *Wick v. Chelan Electric Co.*, 280 U.S. 108, 111, 74 L.Ed. 212, 217, 50 S. Ct. 41 (1929). Accordingly, the Court should deny this Petition for Writ of Certiorari.

Respectfully submitted,

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